

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

1STARR DALTON,

Plaintiff,

v.

CIVIL ACTION NO. 2:08-cv-00335

W. VA. DIVISION OF CORRECTIONS, et al.,

Defendants.

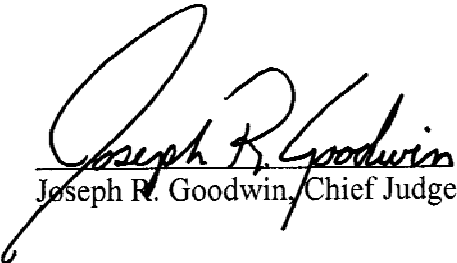
**ORDER**

Two motions are pending before the court. The first is the defendants' Motion to Dismiss [Docket 71]. The second is the plaintiff's Motion to Strike the defendants' Motion to Dismiss [Docket 80]. Pursuant to 28 U.S.C. § 636(b)(1)(B), this case was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for proposed findings of fact and recommendations for disposition. On May 14, 2009, the Magistrate Judge submitted the proposed findings of fact and recommendation ("PF&R") [Docket 93]. The Magistrate Judge recommended that the court grant the defendants' Motion and that the court deny the plaintiff's Motion.

On June 3, 2009, the plaintiff filed timely objections to the PF&R [Docket 95]. The defendants filed a response on June 9, 2009 [Docket 96]. The court has reviewed *de novo* those portions of the Magistrate Judge's PF&R to which the plaintiff objects and **FINDS** that the objections lack merit. Accordingly, the court **ADOPTS** the Magistrate Judge's PF&R. The court **GRANTS** the defendant's Motion to Dismiss and **DENIES** the plaintiff's Motion to Strike. The

court **DIRECTS** the Clerk to send a certified copy of this Memorandum Opinion and Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: August 25, 2009



Joseph R. Goodwin, Chief Judge